character. *Held*, that the instruction was erroneous. *Northwestern Mutual Insurance Co.* v. *Rochester German Insurance Co.*, (1901), — Minn. —, 88 N. W. Rep. 265, 56 L. R. A. 108.

The court held, that the cases wherein total loss had been defined as a "loss of identity and specific character" were almost entirely those in which there had been a substantial destruction of the building. Each case must in general rest on its own facts, but there will be deemed to be a total loss unless there remains a substantial part of the building in place, which with reasonable repairs may be used for rebuilding. It was proper in this case to submit it to the jury. The court relied among others on these cases: *Royal Ins. Co.* v. *McIntyre*, 90 Tex. 170, 35 L. R. A. 672; *Providence Washington Ins. Co.* v. *Board of Education*, 49 W. Va. 360, 38 S. E. Rep. 679; *Corbett* v. *Spring Garden Ins. Co.*, 155 N. Y. 389, 41 L. R. A. 318; *Seyle* v. *Millers' Nat. Ins. Co.*, 74 Wis. 67, 41 N. W. Rep. 443; *Lindner* v. *Ins. Co.*, 93 Wis. 526, 67 N. W. Rep. 1125; *Ohage* v. *Union Ins. Co.*, 82 Minn. 426, 85 N. W. 212.

MANDAMUS—JURISDICTION TO ISSUE WRIT AGAINST THE GOVERNOR.—A statute of Ohio, in terms held by the court to be mandatory and to leave no room for discretion, required the governor to make appointments to fill vacancies in office. Such a vacancy occurred, which the governor declined to fill by appointment. *Held*, that the court had jurisdiction to issue the writ of mandamus to the governor to require him to make the appointment. *State* v. *Nash* (1902), — Ohio St. —, 64 N. E. Rep. 558.

A similar holding in Nebraska was noted in the preceding number. 1 MICH. LAW REV., 144. As was there observed, the cases upon the question are in conflict, but many courts have exercised the jurisdiction where the act in question was a ministerial duty positively imposed. Such has been the holding in Ohio since 1856. *State* v. *Governor*, 5 Ohio St. 528. In the principal case, the court referred particularly to the dissenting opinions in *State* v. *Canvassers*, 17 Fla. 9; *People* v. *Morton*, 156 N. Y. 136, 50 N. E. 791.

MASTER AND SERVANT—CONTRACT—SATISFACTION OF PROMISEE.—The defendant hired the plaintiff, under a written contract, as a color-mixer, the work to be done to the satisfaction of the defendant. The plaintiff brought an action for an unlawful discharge. The defendant relied, in justification of the discharge, on dissatisfaction with the work done. *Held*, that it was proper to submit to the jury, the questions: (1) Was the employer dissatisfied with the work, and (2) was the discharge the result of the dissatisfaction? *Gwynne* v. *Hitchner* (1902),—N. J. L.—, 52 Atl. Rep. 997.

This appears to modify the general rule "that where the subject matter of the contract involves personal taste and judgment the reasonableness of the satisfaction is immaterial." In reality it follows the general rule but modifies the application of it to the facts and is a just and reasonable modification. It is followed in *Hartford Sorghum Manf. Co.* v. *Brush*, 43 Vt. 528, and *Daggett* v. *Johnson*, 49 Vt. 345.

MORTGAGES—FORECLOSURE—REDEMPTION.—A suit in equity to foreclose certain mortgages on a lease of a portion of a harbor area, a wharf, a fishing and fish-canning plant, and all personal property used for carrying on the business. The lower court decreed that all of said property should be sold in one parcel, absolutely, and without redemption. The state laws provided that sales of real estate should be subject to redemption. *Held*: That the property should be sold as an entirety, and not subject to the right of redemption.

The Pacific Northwest Packing Co. v. *Allen* (1902), — C. C. A. —, 116 Fed. Rep. 312.

Said the court: "All the property mentioned, constituting the material parts of the entire plant, and embracing the real estate, franchises, and personal property, are so essentially blended and intermingled as to render each indispensable to the value of the other, so that they cannot be separated without material injury to the value of the other parts." The general rule is that the statutory right of redemption, and right to sale in separate parcels, does not extend to the real estate of a corporation authorized to acquire, hold, and use property for public purposes. *Hammock* v. *Trust Co.*, 105 U. S. 77, 26 L. Ed. 1111; *Sioux City Terminal R. and Warehouse Co.* v. *Trust Co. of North America*, 27 C. C. A. 73, 82 Fed. 124, 137; *McKenzie* v. *Water Co.*, 6 N. D. 361, 379, 71 N. W. 608, 614; *National Foundry & Pipe Works* v. *Oconto Water Co.*, 52 Fed. 43, 45; *Simmons* v. *Taylor*, 38 Fed. 682, 694, per Shiras J.; *Farmers' Loan & Trust Co.* v. *Iowa Water Co.*, 78 Fed. 881, 889, et seq. In the present case, however, the court bases its decision, not on the public, or quasi public, character of the corporation whose property is to be sold, but on the necessity arising from the condition and character of the property mortgaged. "Separation of the real estate . . . would destroy the efficiency and value of the whole."

MUNICIPAL CORPORATIONS—EMINENT DOMAIN—COMPENSATION TO ABUTTING OWNERS.—Action in equity temporarily to restrain defendants from erecting telephone poles in front of plaintiff's property in the city of Langdon, N. D. Plaintiff owned the fee to the middle of the street subject only to the public easement under the dedication of the streets and alleys of the city for public uses. By ordinance the city granted a telephone franchise to the defendants but was silent upon the subject of compensation to abutting owners. Defendants urged that they were exercising public functions, that the poles did not constitute an additional servitude, and that, moreover, plaintiff had a complete remedy in damages at law. *Held*, that telephone poles did constitute an additional servitude and that plaintiff might restrain their erection. *Donovan* v. *Allert* (1902), — N. Dak. —, 91 N. W. Rep. 441.

In a similar action in Ohio, where the plaintiff's right in the street was found to be the same, but the defendant corporation had no express permission to enter the street, *Held*, that the pole constituted an additional servitude and its erection might be permanently enjoined, *Callen* v. *Columbus Edison Electric Light Co.* (1902), — Ohio St. —, 64 N. E. Rep. 141.

In the first case in answering what a public use so contemplated by the dedication was, the court said that the primary use of a street or highway is confined to travel and transportation. That in a sense, the use of a telephone company was a public one in that it had public rights which the law would enforce, but that these rights could only be obtained by paying for them. "There is no reason in law or in common justice why it should not pay for what it needs in the prosecution of its business."

To the defendant's objection that the plaintiff had a legal remedy, the court declared that the taking or damaging of private property for public use was so serious that payment as compensation for losses was made a prerequisite and consequently that plaintiff had a right to a preliminary injunction.

The cases upon this subject—as to whether the erection of telephone, telegraph or electric light poles in a street is an additional servitude, not contemplated by the dedication and for which the abutting owner may demand compensation, are in conflict. The cases which hold it to be an additional servitude are *Krueger* v. *Wisconsin Teleph. Co.* (Wis.) 50 L. R. A. 298;